

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AUGUST B. KREIS, IV,
Plaintiff,

v.

NORTHAMPTON COUNTY
PRISON, *et al.*,
Defendants.

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CIVIL ACTION NO. 21-CV-2360

ORDER

AND NOW, this 14th day of September 2022, upon consideration of Plaintiff August B. Kreis, IV's supplemented Third Amended Complaint (ECF Nos. 40, 43), motion for supplemental complaint (ECF No. 41), motion to file supplemental complaint (ECF No. 42), and motion for consideration of original complaint (ECF No. 48), it is **ORDERED** that:

1. Kreis's motion for supplemental complaint (ECF No. 41), and motion to file supplemental complaint (ECF No. 42) are **GRANTED** in accordance with the Order of the Court entered in Civil Action No. 21-4961 (ECF No. 41-3).

2. Kreis's motion for consideration of original complaint (ECF No. 48) is **DISMISSED AS MOOT** in light of the issuance of this Order and accompanying Memorandum.

3. For the reasons stated in the Court's Memorandum, the following claims included in the supplemental Third Amended Complaint are **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii): official capacity claims against Defendants Wahlcheski, Keller, Polina, Caffrey, Nicki, and Kerstyn; grievance based claims against Defendants Horvath, Keller, Harmon, Nicki, Bartholomew, Caffrey and Klienman;

conditions of confinement claims related to showers and recreation; and deliberate indifference claims against Kerstyn and Caffrey based on failure to supply distilled water.

4. For the reasons stated in the Court's Memorandum, the following claims included in the supplemental Third Amended Complaint are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii): due process claims against Defendants Gazzano and Douglas, conditions of confinement claims related to the condition of the cell, deliberate indifference claims against Polina, Keller and Harmon, and claims against Primecare.

5. The Clerk of Court is **DIRECTED** to send Kreis a blank copy of the Court's standard form complaint for prisoners to use to file a complaint bearing the above civil action number.¹

6. Kreis may file a fourth amended complaint within **30 days** in the event he can allege additional facts to cure the deficiencies identified in the Court's Memorandum. Any fourth amended complaint shall identify **ALL** defendants in the caption of the fourth amended complaint in addition to identifying them in the body of the fourth amended complaint, shall state the basis for Kreis's claims against each defendant, and shall bear the title "Fourth Amended Complaint" and the case number 21-2360. If Kreis files a fourth amended complaint, his fourth amended complaint must be a complete document that includes all of the bases for Kreis's claims, including claims that the Court has not yet dismissed if he seeks to proceed on those claims. Claims that are not included in the fourth amended complaint will not be considered part of this case. When drafting his fourth amended complaint, Kreis should be

¹ This form is available on the Court's website at <http://www.paed.uscourts.gov/documents/forms/frmc1983f.pdf>.

mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. Upon the filing of a fourth amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

7. If Kreis does not file a fourth amended complaint the Court will direct service of his supplemented Third Amended Complaint on Defendants Ackerman, Gazzano, Horvath, Kotsura, Kuczma, Santiago, Arias, and Walker only. Kreis may also notify the Court that he seeks to proceed on these claims rather than file a fourth amended complaint. If he files such a notice, Kreis is reminded to include the case number for this case, 21-2360.

8. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case if summonses are issued.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.